

1 Traeger Machetanz, Esq.  
2 Thomas R. Krider, Esq.  
3 OLES MORRISON RINKER & BAKER, LLP  
4 745 Fourth Avenue, Suite 502  
5 Anchorage, AK 99501-2136  
6 Telephone: (907) 258-0106  
7 Telecopier: (907) 258-5519

8 Attorneys for Nugget Construction Co., Inc.,  
9 and USF&G, Defendants

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

12 UNITED STATES OF AMERICA for the )  
13 use of NORTH STAR TERMINAL & )  
14 STEVEDORE COMPANY, d/b/a NORTHERN )  
15 STEVEDORING & HANDLING, and NORTH ) No. A98-009 CIV (HRH)  
16 STAR TERMINAL & STEVEDORE COMPANY, )  
17 d/b/a Northern Stevedoring & )  
18 Handling, on its own behalf, )  
19 )  
20 Plaintiffs, )  
21 and )  
22 )  
23 UNITED STATES OF AMERICA for the )  
24 use of SHORESIDE PETROLEUM, INC., )  
25 d/b/a Marathon Fuel Service, and )  
26 SHORESIDE PETROLEUM, INC., d/b/a )  
27 Marathon Fuel Service, on its own )  
28 behalf, )  
29 )  
30 Intervening Plaintiffs, )  
31 and )  
32 )  
33 METCO, INC., )  
34 )  
35 Intervening Plaintiff, )  
36 )  
37 vs. )  
38 )  
39 NUGGET CONSTRUCTION, INC.; SPENCER )  
40 ROCK PRODUCTS, INC.; UNITED )  
41 STATES FIDELITY AND GUARANTY )  
42 COMPANY; and ROBERT A. LAPORE, )  
43 )  
44 Defendants. )  
45 )

AFFIDAVIT OF  
L.D. "RANDY" RANDOLPH  
IN SUPPORT OF NUGGET'S  
MOTION FOR SUMMARY JUDGMENT  
ON NORTH STAR'S STATE  
LAW CLAIMS

1 STATE OF ALASKA )

2 )

3 )

4

5 L.D. "Randy" RANDOLPH, being first duly sworn upon oath, deposes  
6 and states as follows:

7 1. I am the owner of LDR Engineering Services, Inc. LDR  
8 was hired by Nugget Construction, Inc. to perform Project Management  
9 services for Nugget on the Homer Spit repair and extension project.  
10 During all times relevant to the events at issue in the present  
11 litigation, I acted in that capacity on behalf of Nugget. I am over  
12 the age of eighteen and am competent to testify in this matter.

13 2. On or about September 28, 1996, the U.S. Army Corps of  
14 Engineers ("USACOE") awarded Nugget Contract DACW85-96-C-0020 to  
15 repair and extend the Homer Spit in Seward, Alaska (the "Project").  
16 Attached hereto as Exhibit 1 is a true and correct copy of Contract  
17 No. DACW85-96-C-0020. USF&G provided a payment bond on the Project.  
18 Attached hereto as Exhibit 2 is a true and correct copy of Payment  
19 Bond 99-0120-50298-96-5.

20 3. On January 15, 1997, Nugget entered into a Material  
21 Contract with Spencer Rock for the supply and transport of armor, toe  
22 and filter stone rock from the Spencer Quarry, located in Seward,  
23 Alaska, to a barge docked in Seward. Attached hereto as Exhibit 3 is  
24 a true and correct copy of the Material Contract, December 18, 1996.  
25 Between the Spencer Quarry and the Seward dock, the rock traveled in

*U.S. ex rel. North Star, et al. v. Nugget Construction, et al.*

Case No. A98-009 CIV (HRH)

Affidavit of L.D. "Randy" Randolph -- Page 2 of 6

1 four distinct segments. First, after blasting, rocks were gathered  
2 and loaded into trucks at the Spencer Quarry. These trucks  
3 transported the rock from the Spencer Quarry to the Alaska Railroad  
4 Corporation ("ARRC") station, where the rock was loaded into ARRC rail  
5 cars. This work was performed by Spencer Rock (which was later  
6 assisted by Nugget). Second, the rock traveled by ARRC rail car to  
7 Seward, where it was unloaded from the rail cars onto a "siding" at  
8 the ARRC rail yard in Seward. Third, the rock was transported by  
9 truck from the siding at the ARRC rail yard in Seward to the Seward  
10 dock. Fourth, and finally, the rock was loaded by North Star into  
11 "skip boxes" and from the boxes at the Seward dock onto barges, which  
12 carried the rock to the Homer Spit; North Star's involvement in the  
13 Project was limited to this fourth and final segment.

14                  4. Spencer Rock commenced performance on or about January  
15 15, 1997. In April 1997, Nugget became concerned that Spencer Rock  
16 was not producing enough quantities of conforming rock for the  
17 Project. First, Nugget visited the Spencer Quarry and found large  
18 stockpiles of nonconforming rock. Second, Spencer Rock's major pieces  
19 of equipment for operating the Spencer Quarry had been repossessed by  
20 Spencer Rock's bank. In light of these developments, in early April  
21 1997, Spencer Rock approached Nugget for assistance in carrying out  
22 Spencer Rock's duties under the Material Contract. Spencer Rock and  
23 Nugget subsequently executed a Support Agreement on April 23, 1997.  
24 Attached hereto as Exhibit 4 is a true and correct copy of the Support  
25 Agreement, April 23, 1997. Per this agreement, the parties agreed

*U.S. ex rel. North Star, et al. v. Nugget Construction, et al.*

Case No. A98-009 CIV (HRH)

Affidavit of L.D. "Randy" Randolph -- Page 3 of 6

1 that, in exchange for Nugget's support of Spencer Rock's work under  
2 the Material Contract, Nugget would recover from Spencer Rock, or  
3 "backcharge," the amounts owed to Nugget by Spencer Rock per the  
4 Material Contract. Nugget entered into the Support Agreement with  
5 Spencer Rock to ensure that its performance on its contract with the  
6 Federal Government would not suffer from anticipated difficulties in  
7 Spencer Rock's performance of its contract with Nugget. There was no  
8 other purpose.

9 5. Nugget's support efforts to Spencer Rock were provided  
10 exclusively to Spencer Rock. Nugget never offered or provided its  
11 support services to Shoreside, Metco or North Star.

12 6. The total amount of rock that Spencer Rock was  
13 contractually obligated to transport, and that was in fact transported  
14 with Nugget's assistance, from the Spencer Quarry to the Nugget barges  
15 in Seward was equal to ten barge loads.

16 7. On May 8, 1997 Nugget paid Spencer Rock \$147,184.66  
17 for the first two barge loads of rock and, between May 8, 1997 and  
18 August 8, 1997, Nugget paid Spencer Rock an additional \$50,000,  
19 totaling \$197,184.66, for work performed under the Material Contract.

20 8. Based on the total quantity of rock delivered for the  
21 project at the rates and terms set forth in the Material Contract, the  
22 total value of rock produced by Spencer Rock was \$1,623,892.50.  
23 Nugget's costs associated with rendering assistance to Spencer Rock  
24 pursuant to the Support Agreement were \$1,878,138. In addition, as a  
25 direct result of Spencer Rock's failure to provide rock that conformed

*U.S. ex rel. North Star, et al. v. Nugget Construction, et al.*

Case No. A98-009 CIV (HRH)

Affidavit of L.D. "Randy" Randolph -- Page 4 of 6

1 to the Material Contract, Nugget incurred additional expenses in  
2 excess of \$1,213,380. Thus, the total amount of costs and expenses  
3 that Nugget incurred resulting from its dealings with Spencer Rock  
4 exceeded the amount that Nugget agreed to pay Spencer Rock under the  
5 Material Contract by \$1,664,811.

6 9. In April 1997, prior to the commencement of North  
7 Star's loading of rock, I contacted Jack Goodwill regarding scheduling  
8 for the barge loading, as well as the need for a certificate of  
9 insurance from North Star in the event that a barge was damaged during  
10 the loading. The barges used to transport the rock to the Homer Spit  
11 were under Nugget's responsibility and control. I was tasked with the  
12 responsibility to coordinate scheduling and loading of the barges,  
13 including the type and quantity of rock loaded and the arrival and  
14 departure of the barges; this required that I communicate directly  
15 with Mr. Goodwill in order to ensure that loading proceeded smoothly.  
16 My direction to North Star regarding the loading and scheduling of the  
17 barges was expressly authorized by Mr. LaPore and Spencer Rock, per  
18 the Support Agreement.

19 10. Neither I nor any Nugget representative was present  
20 during, or otherwise involved in, the negotiations between Mr. LaPore  
21 and Mr. Goodwill that led to the contract under which North Star  
22 agreed to provide services to Spencer Rock on the Homer Spit project.

23 11. Nugget never entered into a written or oral contract,  
24 express or implied, with North Star to provide services in connection  
25 with the Homer Spit project.

1           12. Nugget never received invoices from North Star during  
 2 the course of North Star's performance and Nugget never agreed to pay  
 3 North Star for any services that it provided to Spencer Rock in  
 4 connection with the Homer Spit project.

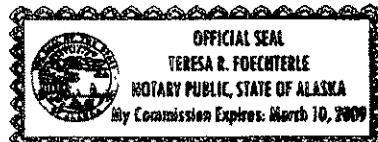
5           13. Nugget's payments to Spencer Rock for its work under  
 6 the Material Contract were made exclusively to Spencer Rock and never  
 7 to North Star.

8           14. Nugget never manifested any intention, directly or  
 9 indirectly, by word or conduct, that Spencer Rock was an agent of  
 10 Nugget, or otherwise authorized Spencer Rock or Mr. LaPore to speak on  
 11 behalf of Nugget. Further, I never indicated to anyone by word or  
 12 conduct that I worked for Spencer Rock, in any capacity, while I was  
 13 employed by Nugget during the Homer Spit project.

14           FURTHER your affiant saith not.

15           L.D. RANDOLPH

16           SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of April,  
 17 2006.



18           Teresa R. Foechtele  
 19 Printed Name: Teresa R. Foechtele  
 20 NOTARY PUBLIC in and for the State  
 21 of Alaska, residing at Wasilla  
 22 My Appointment Expires March 10, 2009

23           P JAD Randolph Affidavit North Star MSJ State Law 99310.0002

24  
 25           U.S. ex rel. North Star, et al. v. Nugget Construction, et al.  
 Case No. A98-009 CIV (HRH)  
 Affidavit of L.D. "Randy" Randolph -- Page 6 of 6